

AMENDED IN SENATE MARCH 24, 2008

SENATE BILL

No. 1194

Introduced by Senator Battin

February 12, 2008

An act ~~relating to taxation~~, to amend Sections 17039, 17276, 17276.1, 23036, 24416, and 24416.1 of, and to add and repeal Sections 17052.16, 17053.16, 17210, 17268.1, 17276.8, 23612.3, 23612.5, 24342, 24356.9, and 24416.8 of, the Revenue and Taxation Code, relating to taxation, to take effect immediately, tax levy.

LEGISLATIVE COUNSEL'S DIGEST

SB 1194, as amended, Battin. ~~Taxation~~—Income and corporation tax benefits: Clean Technology Commerce Zone.

The Personal Income Tax Law and the Corporation Tax Law authorize various tax benefits in computing the taxes imposed by those laws, including, with respect to specified economic incentive areas designated in this state, a credit for purchasing qualified property, as defined, a credit for hiring qualified employees, as defined, a deduction for property as an expense not chargeable to capital account, and preferential treatment of net operating losses, as provided.

This bill would for taxable years beginning on or after January 1, 2009, and before January 1, 2014, provide similar tax benefits with respect to the Clean Technology Commerce Zone, which would be that area in the Coachella Valley. This bill would also for taxable years beginning on or after January 1, 2009, and before January 1, 2014, allow a deduction for the net interest earned on loans that are used in the zone, as provided.

This bill would take effect immediately as a tax levy.

~~Existing law imposes various taxes on income and property and provides various credits against those taxes.~~

~~This bill would declare the Legislature's intent to enact legislation that would provide tax credits, in a manner similar to those provided with respect to enterprise zones, to businesses newly located in the Coachella Valley that develop clean energy technology.~~

Vote: majority. Appropriation: no. Fiscal committee: ~~no~~ yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 17039 of the Revenue and Taxation Code
2 is amended to read:

3 17039. (a) Notwithstanding any provision in this part to the
4 contrary, for the purposes of computing tax credits, the term “net
5 tax” means the tax imposed under either Section 17041 or 17048
6 plus the tax imposed under Section 17504 (relating to lump-sum
7 distributions) less the credits allowed by Section 17054 (relating
8 to personal exemption credits) and any amount imposed under
9 paragraph (1) of subdivision (d) and paragraph (1) of subdivision
10 (e) of Section 17560. Notwithstanding the preceding sentence, the
11 “net tax” shall not be less than the tax imposed under Section
12 17504 (relating to the separate tax on lump-sum distributions), if
13 any. Credits shall be allowed against “net tax” in the following
14 order:

15 (1) Credits that do not contain carryover or refundable
16 provisions, except those described in paragraphs (4) and (5).

17 (2) Credits that contain carryover provisions but do not contain
18 refundable provisions, except for those that are allowed to reduce
19 “net tax” below the tentative minimum tax, as defined by Section
20 17062.

21 (3) Credits that contain both carryover and refundable
22 provisions.

23 (4) The minimum tax credit allowed by Section 17063 (relating
24 to the alternative minimum tax).

25 (5) Credits that are allowed to reduce “net tax” below the
26 tentative minimum tax, as defined by Section 17062.

27 (6) Credits for taxes paid to other states allowed by Chapter 12
28 (commencing with Section 18001).

(7) Credits that contain refundable provisions but do not contain carryover provisions.

The order within each paragraph shall be determined by the Franchise Tax Board.

(b) Notwithstanding the provisions of Sections 17061 (relating to refunds pursuant to the Unemployment Insurance Code) and 19002 (relating to tax withholding), the credits provided in those sections shall be allowed in the order provided in paragraph (6) of subdivision (a).

(c) (1) Notwithstanding any other provision of this part, no tax credit shall reduce the tax imposed under Section 17041 or 17048 plus the tax imposed under Section 17504 (relating to the separate tax on lump-sum distributions) below the tentative minimum tax, as defined by Section 17062, except the following credits:

(A) The credit allowed by Section 17052.2 (relating to teacher retention tax credit).

(B) The credit allowed by former Section 17052.4 (relating to solar energy).

(C) The credit allowed by former Section 17052.5 (relating to solar energy, repealed on January 1, 1987).

(D) The credit allowed by former Section 17052.5 (relating to solar energy, repealed on December 1, 1994).

(E) The credit allowed by Section 17052.12 (relating to research expenses).

(F) The credit allowed by former Section 17052.13 (relating to sales and use tax credit).

(G) The credit allowed by former Section 17052.15 (relating to Los Angeles Revitalization Zone sales tax credit).

(H) The credit allowed by Section 17052.16 (relating to CTCZ sales and use tax credit).

~~(H)~~

(I) The credit allowed by Section 17052.25 (relating to the adoption costs credit).

~~(I)~~

(J) The credit allowed by Section 17053.5 (relating to the renter's credit).

~~(J)~~

(K) The credit allowed by former Section 17053.8 (relating to enterprise zone hiring credit).

~~(K)~~

- 1 (L) The credit allowed by former Section 17053.10 (relating to
2 Los Angeles Revitalization Zone hiring credit).
3 ~~(L)~~
- 4 (M) The credit allowed by former Section 17053.11 (relating
5 to program area hiring credit).
6 (N) *The credit allowed by Section 17053.16 (relating to CTCZ*
7 *hiring credit).*
8 ~~(M)~~
- 9 (O) For each taxable year beginning on or after January 1, 1994,
10 the credit allowed by former Section 17053.17 (relating to Los
11 Angeles Revitalization Zone hiring credit).
12 ~~(N)~~
- 13 (P) The credit allowed by Section 17053.33 (relating to targeted
14 tax area sales or use tax credit).
15 ~~(O)~~
- 16 (Q) The credit allowed by Section 17053.34 (relating to targeted
17 tax area hiring credit).
18 ~~(P)~~
- 19 (R) The credit allowed by Section 17053.49 (relating to qualified
20 property).
21 ~~(Q)~~
- 22 (S) The credit allowed by Section 17053.70 (relating to
23 enterprise zone sales or use tax credit).
24 ~~(R)~~
- 25 (T) The credit allowed by Section 17053.74 (relating to
26 enterprise zone hiring credit).
27 ~~(S)~~
- 28 (U) The credit allowed by Section 17054 (relating to credits for
29 personal exemption).
30 ~~(T)~~
- 31 (V) The credit allowed by Section 17054.5 (relating to the credits
32 for a qualified joint custody head of household and a qualified
33 taxpayer with a dependent parent).
34 ~~(U)~~
- 35 (W) The credit allowed by Section 17054.7 (relating to the credit
36 for a senior head of household).
37 ~~(V)~~
- 38 (X) The credit allowed by former Section 17057 (relating to
39 clinical testing expenses).
40 ~~(W)~~

1 (Y) The credit allowed by Section 17058 (relating to low-income
2 housing).

3 ~~(X)~~

4 (Z) The credit allowed by Section 17061 (relating to refunds
5 pursuant to the Unemployment Insurance Code).

6 ~~(Y)~~

7 (AA) Credits for taxes paid to other states allowed by Chapter
8 12 (commencing with Section 18001).

9 ~~(Z)~~

10 (AB) The credit allowed by Section 19002 (relating to tax
11 withholding).

12 (2) Any credit that is partially or totally denied under paragraph
13 (1) shall be allowed to be carried over and applied to the net tax
14 in succeeding taxable years, if the provisions relating to that credit
15 include a provision to allow a carryover when that credit exceeds
16 the net tax.

17 (d) Unless otherwise provided, any remaining carryover of a
18 credit allowed by a section that has been repealed or made
19 inoperative shall continue to be allowed to be carried over under
20 the provisions of that section as it read immediately prior to being
21 repealed or becoming inoperative.

22 (e) (1) Unless otherwise provided, if two or more taxpayers
23 (other than husband and wife) share in costs that would be eligible
24 for a tax credit allowed under this part, each taxpayer shall be
25 eligible to receive the tax credit in proportion to his or her
26 respective share of the costs paid or incurred.

27 (2) In the case of a partnership, the credit shall be allocated
28 among the partners pursuant to a written partnership agreement in
29 accordance with Section 704 of the Internal Revenue Code, relating
30 to partner's distributive share.

31 (3) In the case of a husband and wife who file separate returns,
32 the credit may be taken by either or equally divided between them.

33 (f) Unless otherwise provided, in the case of a partnership, any
34 credit allowed by this part shall be computed at the partnership
35 level, and any limitation on the expenses qualifying for the credit
36 or limitation upon the amount of the credit shall be applied to the
37 partnership and to each partner.

38 (g) (1) With respect to any taxpayer that directly or indirectly
39 owns an interest in a business entity that is disregarded for tax
40 purposes pursuant to Section 23038 and any regulations thereunder,

1 the amount of any credit or credit carryforward allowable for any
2 taxable year attributable to the disregarded business entity shall
3 be limited in accordance with paragraphs (2) and (3).

4 (2) The amount of any credit otherwise allowed under this part,
5 including any credit carryover from prior years, that may be applied
6 to reduce the taxpayer's "net tax," as defined in subdivision (a),
7 for the taxable year shall be limited to an amount equal to the
8 excess of the taxpayer's regular tax (as defined in Section 17062),
9 determined by including income attributable to the disregarded
10 business entity that generated the credit or credit carryover, over
11 the taxpayer's regular tax (as defined in Section 17062), determined
12 by excluding the income attributable to that disregarded business
13 entity. No credit shall be allowed if the taxpayer's regular tax (as
14 defined in Section 17062), determined by including the income
15 attributable to the disregarded business entity, is less than the
16 taxpayer's regular tax (as defined in Section 17062), determined
17 by excluding the income attributable to the disregarded business
18 entity.

19 (3) If the amount of a credit allowed pursuant to the section
20 establishing the credit exceeds the amount allowable under this
21 subdivision in any taxable year, the excess amount may be carried
22 over to subsequent taxable years pursuant to subdivisions (c) and
23 (d).

24 (h) (1) Unless otherwise specifically provided, in the case of a
25 taxpayer that is a partner or shareholder of an eligible pass-through
26 entity described in paragraph (2), any credit passed through to the
27 taxpayer in the taxpayer's first taxable year beginning on or after
28 the date the credit is no longer operative may be claimed by the
29 taxpayer in that taxable year, notwithstanding the repeal of the
30 statute authorizing the credit prior to the close of that taxable year.

31 (2) For purposes of this subdivision, "eligible pass-through
32 entity" means any partnership or ~~S~~ "S" corporation that files its
33 return on a fiscal year basis pursuant to Section 18566, and that is
34 entitled to a credit pursuant to this part for the taxable year that
35 begins during the last year the credit is operative.

36 (3) This subdivision shall apply to credits that become
37 inoperative on or after the operative date of the act adding this
38 subdivision.

39 *SEC. 2. Section 17052.16 is added to the Revenue and Taxation*
40 *Code, to read:*

1 17052.16. (a) For each taxable year beginning on or after
2 January 1, 2009, and before January 1, 2014, there shall be
3 allowed a credit against the “net tax,” as defined by Section 17039,
4 an amount, not to exceed the limitation in subdivision (f), that is
5 equal to the sales or use tax paid or incurred by the qualified
6 taxpayer in connection with the purchase of qualified property.

7 (b) For purposes of this section:

8 (1) “Qualified property” means any property that is used
9 exclusively in the CTCZ.

10 (2) “Qualified taxpayer” means a person or entity engaged in
11 a trade or business that primarily develops, manufactures,
12 produces, distributes, installs, delivers, or in any other manner
13 advances this state’s goals of renewable energy usage.

14 (3) “CTCZ” means the Clean Technology Commerce Zone
15 which shall be that area within the Coachella Valley.

16 (c) (1) In the case where a credit is allowed for qualified
17 property under more than one section in this part, the qualified
18 taxpayer shall make an election, on the return filed for each year,
19 as to which section applies to that qualified taxpayer.

20 (2) Any election made under this section, and any specification
21 contained in that election, may not be revoked except with the
22 consent of the Franchise Tax Board.

23 (d) In the case where the credit allowed under this section
24 exceeds the limitation imposed by subdivision (f) for the taxable
25 year, that portion of the credit that exceeds the limitation imposed
26 by subdivision (f) may be carried over and added to this credit in
27 succeeding taxable years until the credit is exhausted. The credit
28 shall be applied first to the earliest taxable years possible.

29 (e) Any qualified taxpayer who elects to be subject to this section
30 shall not be entitled to increase the basis of the property as
31 otherwise required by Section 164(a) of the Internal Revenue Code
32 with respect to the sales and use tax paid or incurred in connection
33 with the purchase of qualified property.

34 (f) The amount of the credit provided by this section, including
35 any credit carryover from prior years, in any taxable year shall
36 not exceed the amount of tax that would be imposed on the income
37 attributable to business activities of the qualified taxpayer within
38 the CTCZ as if that attributable income represented all of the
39 income of the qualified taxpayer subject to tax under this part. In
40 the event that a credit carryover is allowable under subdivision

1 (d) for any taxable year after this section is repealed, the CTCZ
2 shall be deemed to remain in existence for purposes of computing
3 this limitation. The amount of that attributable income shall be
4 determined in accordance with Article 2 (commencing with Section
5 25120) of Chapter 17 of Part 11, modified as follows:

6 (1) Income shall be apportioned to the CTCZ by multiplying
7 total income from the business by a fraction, the numerator of
8 which is the property factor plus the payroll factor, and the
9 denominator of which is two.

10 (2) CTCZ shall be substituted for “this state.”

11 (g) If the qualified property is disposed of or no longer used by
12 the qualified taxpayer in the CTCZ at any time before the close of
13 the second taxable year after the property is placed in service, the
14 amount of the credit previously claimed shall be added to the
15 qualified taxpayer’s tax liability in the taxable year of that
16 disposition or nonuse.

17 (h) This section shall remain in effect only until December 1,
18 2014, and as of that date is repealed.

19 SEC. 3. Section 17053.16 is added to the Revenue and Taxation
20 Code, to read:

21 17053.16. (a) For each taxable year beginning on or after
22 January 1, 2009, and before January 1, 2014, there shall be
23 allowed as credit against the “net tax,” as defined in Section
24 17039, to a qualified taxpayer for hiring a qualified employee
25 during the taxable year. The credit shall be equal to the sum of
26 each of the following:

27 (1) Fifty percent for qualified wages in the first year of
28 employment.

29 (2) Forty percent for qualified wages in the second year of
30 employment.

31 (3) Thirty percent for qualified wages in the third year of
32 employment.

33 (4) Twenty percent for qualified wages in the fourth year of
34 employment.

35 (5) Ten percent for qualified wages in the fifth year of
36 employment.

37 (b) For purposes of this section:

38 (1) “Qualified wages” means the wages paid or incurred by
39 the employer during the taxable year to qualified employees.

1 *“Qualified wages” means that portion of hourly wages which does*
2 *not exceed 150 percent of the minimum wage.*

3 (2) *“Qualified years one through five wages” means, with*
4 *respect to any individual, qualified wages received during the*
5 *60-month period beginning with the day the individual commences*
6 *employment within the CTCZ.*

7 (3) *“Minimum wage” means the wage established by the*
8 *Industrial Welfare Commission as provided for in Chapter 1*
9 *(commencing with Section 1171) of Part 4 of Division 2 of the*
10 *Labor Code.*

11 (4) *“Qualified taxpayer” means a person or entity engaged in*
12 *a trade or business that primarily develops, manufactures,*
13 *produces, distributes, installs, delivers, or in any other manner*
14 *advances this state’s goals of renewable energy usage.*

15 (5) *“Qualified employee” means an individual:*

16 (A) *At least 90 percent of whose services for the qualified*
17 *taxpayer during the taxable year are directly related to the conduct*
18 *of the qualified taxpayer’s trade or business located in the CTCZ.*

19 (B) *Who performs at least 50 percent of his or her services for*
20 *the qualified taxpayer during the taxable year in the CTCZ.*

21 (6) *“CTCZ” means the Clean Energy Commerce Zone which*
22 *shall be that area within the Coachella Valley.*

23 (7) (A) *All employees of trades or businesses that are not*
24 *incorporated and that are under common control shall be treated*
25 *as employed by a single employer.*

26 (B) *The credit, if any, allowable by this section with respect to*
27 *each trade or business shall be determined by reference to its*
28 *proportionate share of the qualified wages giving rise to the credit.*

29 *The regulations prescribed under this paragraph shall be based*
30 *on principles similar to the principles that apply in the case of*
31 *controlled groups of corporations as specified in paragraph (8)*
32 *of subdivision (b) of Section 23622.5.*

33 (8) *If an employer acquires the major portion of a trade or*
34 *business of another employer (hereinafter in this paragraph*
35 *referred to as the “predecessor”) or the major portion of a*
36 *separate unit of a trade or business of a predecessor; then, for*
37 *purposes of applying this section, except subdivision (c), for any*
38 *calendar year ending after that acquisition, the employment*
39 *relationship between an employee and an employer shall not be*

1 *treated as terminated if the employee continues to be employed in*
2 *that trade or business.*

3 *(9) Nothing in this section constitutes an expansion of the scope*
4 *of practice of a licensee as designated under a current law.*

5 *(c) (1) If the employment of any employee, with respect to whom*
6 *qualified wages are taken into account under subdivision (a) is*
7 *terminated by the qualified taxpayer at any time during the first*
8 *270 days of that employment, whether or not consecutive, or before*
9 *the close of the 270th calendar day after the day in which that*
10 *employee completes 90 days of employment with the qualified*
11 *taxpayer, the tax imposed by this part for the taxable year in which*
12 *that employment is terminated shall be increased by an amount*
13 *determined under those regulations equal to the credit allowed*
14 *under subdivision (a) for that taxable year and all prior taxable*
15 *years attributable to qualified wages paid or incurred with respect*
16 *to that employee.*

17 *(2) (A) Paragraph (1) shall not apply to any of the following:*

18 *(i) A termination of employment of an employee who voluntarily*
19 *leaves the employment of the qualified taxpayer.*

20 *(ii) A termination of employment of an individual who, before*
21 *the close of the period referred to in paragraph (1), becomes*
22 *disabled to perform the services of that employment, unless that*
23 *disability is removed before the close of that period and the*
24 *qualified taxpayer fails to offer reemployment to that individual.*

25 *(iii) A termination of employment of an individual, if it is*
26 *determined under the applicable employment compensation*
27 *provisions that the termination was due to the misconduct of that*
28 *individual.*

29 *(iv) A termination of employment of an individual due to a*
30 *substantial reduction in the trade or business operations of the*
31 *qualified taxpayer.*

32 *(v) A termination of employment of an individual, if that*
33 *individual is replaced by other qualified employees so as to create*
34 *a net increase in both the number of employees and the hours of*
35 *employment.*

36 *(B) For purposes of paragraph (1), the employment relationship*
37 *between the qualified taxpayer and an employee shall not be*
38 *treated as terminated by reason of a mere change in the form of*
39 *conducting the trade or business of the qualified taxpayer, if the*
40 *employee continues to be employed in that trade or business and*

1 *the qualified taxpayer retains a substantial interest in that trade*
2 *or business.*

3 *(3) Any increase in tax under paragraph (1) shall not be treated*
4 *as tax imposed by this part for purposes of determining the amount*
5 *of any credit allowable under this part.*

6 *(d) In the case of an estate or trust:*

7 *(1) The qualified wages for any taxable year shall be*
8 *apportioned between the estate or trust and the beneficiaries on*
9 *the basis of the income of the estate or trust allocable to each.*

10 *(2) Any beneficiary to whom any qualified wages have been*
11 *apportioned under paragraph (1) shall be treated, for purposes*
12 *of this part, as the employer with respect to those wages.*

13 *(e) The credit shall be reduced by the hiring credit allowed*
14 *under Sections 17053.7 and 17053.46. The credit shall also be*
15 *reduced by the federal credit allowed under Section 51 of the*
16 *Internal Revenue Code.*

17 *In addition, any deduction otherwise allowed under this part for*
18 *the wages or salaries paid or incurred by the qualified taxpayer*
19 *upon which the credit is based shall be reduced by the amount of*
20 *the credit.*

21 *(f) In the case where the credit allowed under this section*
22 *exceeds the limitation imposed by subdivision (g) for the taxable*
23 *year, that portion of the credit that exceeds the limitation imposed*
24 *by subdivision (g) may be carried over and added to this credit in*
25 *succeeding taxable years until the credit is exhausted. The credit*
26 *shall be applied first to the earliest taxable years possible.*

27 *(g) The amount of the credit provided by this section, including*
28 *any credit carryover from prior years, in any taxable year shall*
29 *not exceed the amount of tax that would be imposed on the income*
30 *attributable to business activities of the qualified taxpayer within*
31 *the CTCZ as if that attributable income represented all of the*
32 *income of the qualified taxpayer subject to tax under this part. In*
33 *the event that a credit carryover is allowable under subdivision*
34 *(f) for any taxable year after this section is repealed, the CTCZ*
35 *shall be deemed to remain in existence for purposes of computing*
36 *this limitation. The amount of that attributable income shall be*
37 *determined in accordance with Article 2 (commencing with Section*
38 *25120) of Chapter 17 of Part 11, modified as follows:*

39 *(1) Income shall be apportioned to the CTCZ by multiplying*
40 *total income from the business by a fraction, the numerator of*

1 *which is the property factor plus the payroll factor, and the*
2 *denominator of which is two.*

3 *(2) CTCZ shall be substituted for “this state.”*

4 *(h) This section shall remain in effect only until December 1,*
5 *2014, and as of that date, is repealed.*

6 *SEC. 3.5. Section 17210 is added to the Revenue and Taxation*
7 *Code, to read:*

8 *17210. (a) For any taxable year beginning on or after January*
9 *1, 2009, and before January 1, 2014, any lender that loans money*
10 *to a qualified taxpayer, as defined by Section 17052.16, for use*
11 *by that qualified taxpayer in the Clean Technology Commerce*
12 *Zone for purposes of advancing clean technology, shall be allowed*
13 *a deduction in an amount equal to the net interest earned on that*
14 *loan during the taxable year.*

15 *(b) This section shall remain in effect only until December 1,*
16 *2014, and as of that date is repealed.*

17 *SEC. 4. Section 17268.1 is added to the Revenue and Taxation*
18 *Code, to read:*

19 *17268.1. (a) For each taxable year beginning on or after*
20 *January 1, 2009, and before January 1, 2014, a taxpayer may elect*
21 *to treat 40 percent of the cost of any Section 17268.1 property as*
22 *an expense that is not chargeable to the capital account. Any cost*
23 *so treated shall be allowed as a deduction for the taxable year in*
24 *which the taxpayer places the Section 17268.1 property in service.*

25 *(b) In the case of a husband or wife filing separate returns for*
26 *a taxable year in which a spouse is entitled to the deduction under*
27 *subdivision (a), the applicable amount shall be equal to 50 percent*
28 *of the amount otherwise determined under subdivision (a).*

29 *(c) (1) An election under this section for any taxable year shall*
30 *meet both of the following requirements:*

31 *(A) Specify the items of Section 17268.1 property to which the*
32 *election applies and the portion of the cost of each of those items*
33 *that is to be taken into account under subdivision (a).*

34 *(B) Be made on the taxpayer’s return of the tax imposed by this*
35 *part for the taxable year.*

36 *(2) Any election made under this section, and any specification*
37 *contained in that election, may not be revoked except with the*
38 *consent of the Franchise Tax Board.*

39 *(d) (1) For purposes of this section, “Section 17268.1 property”*
40 *means any recovery property that is each of the following:*

1 (A) Section 1245 property (as defined in Section 1245(a)(3) of
2 the Internal Revenue Code).

3 (B) Purchased by the taxpayer for exclusive use in a trade or
4 business conducted within the CTCZ.

5 (C) Purchased before the date the CTCZ designation expires,
6 is no longer binding, or becomes inoperative.

7 (2) For purposes of paragraph (1), “purchase” means any
8 acquisition of property, but only if both of the following apply:

9 (A) The property is not acquired from a person whose
10 relationship to the person acquiring it would result in the
11 disallowance of losses under Section 267 or 707(b) of the Internal
12 Revenue Code (but, in applying Section 267(b) and Section 267(c)
13 of the Internal Revenue Code for purposes of this section, Section
14 267(c)(4) of the Internal Revenue Code shall be treated as
15 providing that the family of an individual shall include only his or
16 her spouse, ancestors, and lineal descendants).

17 (B) The basis of the property in the hands of the person
18 acquiring it is not determined by either of the following:

19 (i) In whole or in part by reference to the adjusted basis of the
20 property in the hands of the person from whom acquired.

21 (ii) Under Section 1014 of the Internal Revenue Code, relating
22 to basis of property acquired from a decedent.

23 (3) For purposes of this section, the cost of property does not
24 include that portion of the basis of the property that is determined
25 by reference to the basis of other property held at any time by the
26 person acquiring the property.

27 (4) This section shall not apply to estates and trusts.

28 (5) This section shall not apply to any property for which the
29 taxpayer may not make an election for the taxable year under
30 Section 179 of the Internal Revenue Code because of the provisions
31 of Section 179(d) of the Internal Revenue Code.

32 (6) In the case of a partnership, the dollar limitation in
33 subdivision (f) shall apply at the partnership level and at the
34 partner level.

35 (7) This section shall not apply to any property described in
36 Section 168(f) of the Internal Revenue Code, relating to property
37 to which Section 168 of the Internal Revenue Code does not apply.

38 (e) For purposes of this section:

39 (1) “CTCZ” means the Clean Technology Commerce Zone
40 which shall be that area within the Coachella Valley.

(2) “Taxpayer” means a taxpayer that conducts a trade or business within the CTCZ and, for the first two taxable years, has a net increase in jobs (defined as 2,000 paid hours per employee per year) of one or more employees in the CTCZ.

(A) The net increase in the number of jobs shall be determined by subtracting the total number of full-time employees (defined as 2,000 paid hours per employee per year) the taxpayer employed in this state in the taxable year prior to commencing business operations in the CTCZ from the total number of full-time employees the taxpayer employed in this state during the second taxable year after commencing business operations in the CTCZ. For taxpayers who commence doing business in this state with their CTCZ business operation, the number of employees for the taxable year prior to commencing business operations in the CTCZ shall be zero. If the taxpayer has a net increase in jobs in the state, the credit shall be allowed only if one or more full-time employees is employed within the CTCZ.

(B) The total number of employees employed in the CTCZ shall equal the sum of both of the following:

(i) The total number of hours worked in the CTCZ for the taxpayer by employees (not to exceed 2,000 hours per employee) who are paid an hourly wage divided by 2,000.

(ii) The total number of months worked in the CTCZ for the taxpayer by employees who are salaried employees divided by 12.

(C) In the case of a taxpayer who first commences doing business in the CTCZ during the taxable year, for purposes of clauses (i) and (ii), respectively, of subparagraph (B) the divisors “2,000” and “12” shall be multiplied by a fraction, the numerator of which is the number of months of the taxable year that the taxpayer was doing business in the CTCZ and the denominator of which is 12.

(f) The aggregate cost of all Section 17268.1 property that may be taken into account under subdivision (a) for any taxable year shall not exceed the following applicable amounts:

	The applicable amount is:
2009 taxable year.....	\$100,000
1st taxable year thereafter.....	100,000
2nd taxable year thereafter.....	75,000

1		<i>The applicable</i>
2		<i>amount is:</i>
3	<i>3rd taxable year thereafter.....</i>	<i>75,000</i>
4	<i>Each taxable year thereafter.....</i>	<i>50,000</i>

5
6 *(g) This section shall apply only to property that is used*
7 *exclusively in a trade or business conducted within the CTCZ.*

8 *(h) (1) Any amounts deducted under subdivision (a) with respect*
9 *to property that ceases to be used in the trade or business within*
10 *the CTCZ at any time before the close of the second taxable year*
11 *after the property was placed in service shall be included in income*
12 *for that year.*

13 *(2) At the close of the second taxable year, if the taxpayer has*
14 *not increased the number of its employees as determined by*
15 *paragraph (2) of subdivision (e), then the amount of the deduction*
16 *previously claimed shall be added to the taxpayer's taxable income*
17 *for the taxpayer's second taxable year.*

18 *(i) Any taxpayer who elects to be subject to this section shall*
19 *not be entitled to claim for the same property the deduction under*
20 *Section 179 of the Internal Revenue Code, relating to an election*
21 *to expense certain depreciable business assets.*

22 *(j) This section shall remain in effect only until December 1,*
23 *2014, and as of that date is repealed.*

24 *SEC. 5. Section 17276 of the Revenue and Taxation Code is*
25 *amended to read:*

26 *17276. Except as provided in Sections 17276.1, 17276.2,*
27 *17276.4, 17276.5, 17276.6, ~~and 17276.7~~ 17276.7, and 17276.8,*
28 *the deduction provided by Section 172 of the Internal Revenue*
29 *Code, relating to a net operating loss deduction, shall be modified*
30 *as follows:*

31 *(a) (1) Net operating losses attributable to taxable years*
32 *beginning before January 1, 1987, shall not be allowed.*

33 *(2) A net operating loss shall not be carried forward to any*
34 *taxable year beginning before January 1, 1987.*

35 *(b) (1) Except as provided in paragraphs (2) and (3), the*
36 *provisions of Section 172(b)(2) of the Internal Revenue Code,*
37 *relating to the amount of carryovers, shall be modified so that the*
38 *applicable percentage of the entire amount of the net operating*
39 *loss for any taxable year shall be eligible for carryover to any*

1 subsequent taxable year. For purposes of this subdivision, the
2 applicable percentage shall be:

3 (A) Fifty percent for any taxable year beginning before January
4 1, 2000.

5 (B) Fifty-five percent for any taxable year beginning on or after
6 January 1, 2000, and before January 1, 2002.

7 (C) Sixty percent for any taxable year beginning on or after
8 January 1, 2002, and before January 1, 2004.

9 (D) One hundred percent for any taxable year beginning on or
10 after January 1, 2004.

11 (2) In the case of a taxpayer who has a net operating loss in any
12 taxable year beginning on or after January 1, 1994, and who
13 operates a new business during that taxable year, each of the
14 following shall apply to each loss incurred during the first three
15 taxable years of operating the new business:

16 (A) If the net operating loss is equal to or less than the net loss
17 from the new business, 100 percent of the net operating loss shall
18 be carried forward as provided in subdivision (d).

19 (B) If the net operating loss is greater than the net loss from the
20 new business, the net operating loss shall be carried over as
21 follows:

22 (i) With respect to an amount equal to the net loss from the new
23 business, 100 percent of that amount shall be carried forward as
24 provided in subdivision (d).

25 (ii) With respect to the portion of the net operating loss that
26 exceeds the net loss from the new business, the applicable
27 percentage of that amount shall be carried forward as provided in
28 subdivision (d).

29 (C) For purposes of Section 172(b)(2) of the Internal Revenue
30 Code, the amount described in clause (ii) of subparagraph (B) shall
31 be absorbed before the amount described in clause (i) of
32 subparagraph (B).

33 (3) In the case of a taxpayer who has a net operating loss in any
34 taxable year beginning on or after January 1, 1994, and who
35 operates an eligible small business during that taxable year, each
36 of the following shall apply:

37 (A) If the net operating loss is equal to or less than the net loss
38 from the eligible small business, 100 percent of the net operating
39 loss shall be carried forward to the taxable years specified in
40 subdivision (d).

1 (B) If the net operating loss is greater than the net loss from the
2 eligible small business, the net operating loss shall be carried over
3 as follows:

4 (i) With respect to an amount equal to the net loss from the
5 eligible small business, 100 percent of that amount shall be carried
6 forward as provided in subdivision (d).

7 (ii) With respect to that portion of the net operating loss that
8 exceeds the net loss from the eligible small business, the applicable
9 percentage of that amount shall be carried forward as provided in
10 subdivision (d).

11 (C) For purposes of Section 172(b)(2) of the Internal Revenue
12 Code, the amount described in clause (ii) of subparagraph (B) shall
13 be absorbed before the amount described in clause (i) of
14 subparagraph (B).

15 (4) In the case of a taxpayer who has a net operating loss in a
16 taxable year beginning on or after January 1, 1994, and who
17 operates a business that qualifies as both a new business and an
18 eligible small business under this section, that business shall be
19 treated as a new business for the first three taxable years of the
20 new business.

21 (5) In the case of a taxpayer who has a net operating loss in a
22 taxable year beginning on or after January 1, 1994, and who
23 operates more than one business, and more than one of those
24 businesses qualifies as either a new business or an eligible small
25 business under this section, paragraph (2) shall be applied first,
26 except that if there is any remaining portion of the net operating
27 loss after application of clause (i) of subparagraph (B) of that
28 paragraph, paragraph (3) shall be applied to the remaining portion
29 of the net operating loss as though that remaining portion of the
30 net operating loss constituted the entire net operating loss.

31 (6) For purposes of this section, the term “net loss” means the
32 amount of net loss after application of Sections 465 and 469 of the
33 Internal Revenue Code.

34 (c) Net operating loss carrybacks shall not be allowed.

35 (d) (1) (A) For a net operating loss for any taxable year
36 beginning on or after January 1, 1987, and before January 1, 2000,
37 Section 172(b)(1)(A)(ii) of the Internal Revenue Code, relating to
38 years to which net operating losses may be carried, is modified to
39 substitute “five taxable years” in lieu of “20 taxable years” except
40 as otherwise provided in paragraphs (2) and (3).

(B) For a net operating loss for any taxable year beginning on or after January 1, 2000, Section 172(b)(1)(A)(ii) of the Internal Revenue Code, relating to years to which net operating losses may be carried, is modified to substitute “10 taxable years” in lieu of “20 taxable years.”

(2) For any taxable year beginning before January 1, 2000, in the case of a “new business,” the “five taxable years” in paragraph (1) shall be modified to read as follows:

(A) “Eight taxable years” for a net operating loss attributable to the first taxable year of that new business.

(B) “Seven taxable years” for a net operating loss attributable to the second taxable year of that new business.

(C) “Six taxable years” for a net operating loss attributable to the third taxable year of that new business.

(3) For any carryover of a net operating loss for which a deduction is denied by Section 17276.3, the carryover period specified in this subdivision shall be extended as follows:

(A) By one year for a net operating loss attributable to taxable years beginning in 1991.

(B) By two years for a net operating loss attributable to taxable years beginning prior to January 1, 1991.

(4) The net operating loss attributable to taxable years beginning on or after January 1, 1987, and before January 1, 1994, shall be a net operating loss carryover to each of the 10 taxable years following the year of the loss if it is incurred by a taxpayer that is under the jurisdiction of the court in a Title 11 or similar case at any time during the income year. The loss carryover provided in the preceding sentence shall not apply to any loss incurred after the date the taxpayer is no longer under the jurisdiction of the court in a Title 11 or similar case.

(e) For purposes of this section:

(1) “Eligible small business” means any trade or business that has gross receipts, less returns and allowances, of less than one million dollars (\$1,000,000) during the taxable year.

(2) Except as provided in subdivision (f), “new business” means any trade or business activity that is first commenced in this state on or after January 1, 1994.

(3) “Title 11 or similar case” shall have the same meaning as in Section 368(a)(3) of the Internal Revenue Code.

(4) In the case of any trade or business activity conducted by a partnership or ~~“S corporation,”~~ *“S” corporation* paragraphs (1) and (2) shall be applied to the partnership or ~~“S corporation.”~~ *“S” corporation.*

(f) For purposes of this section, in determining whether a trade or business activity qualifies as a new business under paragraph (2) of subdivision (e), the following rules shall apply:

(1) In any case where a taxpayer purchases or otherwise acquires all or any portion of the assets of an existing trade or business (irrespective of the form of entity) that is doing business in this state (within the meaning of Section 23101), the trade or business thereafter conducted by the taxpayer (or any related person) shall not be treated as a new business if the aggregate fair market value of the acquired assets (including real, personal, tangible, and intangible property) used by the taxpayer (or any related person) in the conduct of its trade or business exceeds 20 percent of the aggregate fair market value of the total assets of the trade or business being conducted by the taxpayer (or any related person). For purposes of this paragraph only, the following rules shall apply:

(A) The determination of the relative fair market values of the acquired assets and the total assets shall be made as of the last day of the first taxable year in which the taxpayer (or any related person) first uses any of the acquired trade or business assets in its business activity.

(B) Any acquired assets that constituted property described in Section 1221(1) of the Internal Revenue Code in the hands of the transferor shall not be treated as assets acquired from an existing trade or business, unless those assets also constitute property described in Section 1221(1) of the Internal Revenue Code in the hands of the acquiring taxpayer (or related person).

(2) In any case where a taxpayer (or any related person) is engaged in one or more trade or business activities in this state, or has been engaged in one or more trade or business activities in this state within the preceding 36 months (“prior trade or business activity”), and thereafter commences an additional trade or business activity in this state, the additional trade or business activity shall only be treated as a new business if the additional trade or business activity is classified under a different division of the Standard Industrial Classification (SIC) Manual published by the United States Office of Management and Budget, 1987 edition, than are

1 any of the taxpayer's (or any related person's) current or prior
2 trade or business activities.

3 (3) In any case where a taxpayer, including all related persons,
4 is engaged in trade or business activities wholly outside of this
5 state and the taxpayer first commences doing business in this state
6 (within the meaning of Section 23101) after December 31, 1993
7 (other than by purchase or other acquisition described in paragraph
8 (1)), the trade or business activity shall be treated as a new business
9 under paragraph (2) of subdivision (e).

10 (4) In any case where the legal form under which a trade or
11 business activity is being conducted is changed, the change in form
12 shall be disregarded and the determination of whether the trade or
13 business activity is a new business shall be made by treating the
14 taxpayer as having purchased or otherwise acquired all or any
15 portion of the assets of an existing trade or business under the rules
16 of paragraph (1) of this subdivision.

17 (5) "Related person" shall mean any person that is related to
18 the taxpayer under either Section 267 or 318 of the Internal
19 Revenue Code.

20 (6) "Acquire" shall include any gift, inheritance, transfer incident
21 to divorce, or any other transfer, whether or not for consideration.

22 (7) (A) For taxable years beginning on or after January 1, 1997,
23 the term "new business" shall include any taxpayer that is engaged
24 in biopharmaceutical activities or other biotechnology activities
25 that are described in Codes 2833 to 2836, inclusive, of the Standard
26 Industrial Classification (SIC) Manual published by the United
27 States Office of Management and Budget, 1987 edition, and as
28 further amended, and that has not received regulatory approval for
29 any product from the United States Food and Drug Administration.

30 (B) For purposes of this paragraph:

31 (i) "Biopharmaceutical activities" means those activities that
32 use organisms or materials derived from organisms, and their
33 cellular, subcellular, or molecular components, in order to provide
34 pharmaceutical products for human or animal therapeutics and
35 diagnostics. Biopharmaceutical activities make use of living
36 organisms to make commercial products, as opposed to
37 pharmaceutical activities that make use of chemical compounds
38 to produce commercial products.

39 (ii) "Other biotechnology activities" means activities consisting
40 of the application of recombinant DNA technology to produce

1 commercial products, as well as activities regarding pharmaceutical
2 delivery systems designed to provide a measure of control over
3 the rate, duration, and site of pharmaceutical delivery.

4 (g) In computing the modifications under Section 172(d)(2) of
5 the Internal Revenue Code, relating to capital gains and losses of
6 taxpayers other than corporations, the exclusion provided by
7 Section 18152.5 shall not be allowed.

8 (h) Notwithstanding any provisions of this section to the
9 contrary, a deduction shall be allowed to a “qualified taxpayer” as
10 provided in Sections 17276.1, 17276.2, 17276.4, 17276.5, 17276.6,
11 ~~and 17276.7~~ 17276.7, ~~and 17276.8~~.

12 (i) The Franchise Tax Board may prescribe appropriate
13 regulations to carry out the purposes of this section, including any
14 regulations necessary to prevent the avoidance of the purposes of
15 this section through splitups, shell corporations, partnerships, tiered
16 ownership structures, or otherwise.

17 (j) The Franchise Tax Board may reclassify any net operating
18 loss carryover determined under either paragraph (2) or (3) of
19 subdivision (b) as a net operating loss carryover under paragraph
20 (1) of subdivision (b) upon a showing that the reclassification is
21 necessary to prevent evasion of the purposes of this section.

22 (k) Except as otherwise provided, the amendments made by
23 Chapter 107 of the Statutes of 2000 shall apply to net operating
24 losses for taxable years beginning on or after January 1, 2000.

25 *SEC. 6. Section 17276.1 of the Revenue and Taxation Code is*
26 *amended to read:*

27 17276.1. (a) A qualified taxpayer, as defined in Section
28 17276.2, 17276.4, 17276.5, 17276.6, ~~or 17276.7~~ 17276.7, ~~or~~
29 17276.8, may elect to take the deduction provided by Section 172
30 of the Internal Revenue Code, relating to the net operating loss
31 deduction, as modified by Section 17276, with the following
32 exceptions:

33 (1) Subdivision (a) of Section 17276, relating to years in which
34 allowable losses are sustained, shall not be applicable.

35 (2) Subdivision (b) of Section 17276, relating to the 50-percent
36 reduction of losses, shall not be applicable.

37 (b) The election to compute the net operating loss under this
38 section shall be made in a statement attached to the original return,
39 timely filed for the year in which the net operating loss is incurred
40 and shall be irrevocable. In addition to the exceptions specified in

subdivision (a), the provisions of Section 17276.2, 17276.4, 17276.5, 17276.6, ~~or 17276.7~~ 17276.7, or 17276.8, as appropriate, shall be applicable.

(c) Any carryover of a net operating loss sustained by a qualified taxpayer, as defined in subdivision (a) or (b) of Section 17276.2 as that section read immediately prior to January 1, 1997, shall, if previously elected, continue to be a deduction, as provided in subdivision (a), applied as if the provisions of subdivision (a) or (b) of Section 17276.2, as that section read prior to January 1, 1997, still applied.

SEC. 7. Section 17276.8 is added to the Revenue and Taxation Code, to read:

17276.8. (a) For each taxable year beginning on or after January 1, 2009, and before January 1, 2014, the term “qualified taxpayer” as used in Section 17276.1 includes a person or entity engaged in the conduct of a trade or business within the CTCZ. For purposes of this subdivision, all of the following shall apply:

(1) A net operating loss shall not be a net operating loss carryback to any taxable year and a net operating loss for any taxable year beginning on or after January 1, 2009, and before January 1, 2014, shall be a net operating loss carryover to each of the 15 taxable years following the taxable year of loss.

(2) For purposes of this subdivision:

(A) “Net operating loss” means the loss determined under Section 172 of the Internal Revenue Code, as modified by Section 17276.1, attributable to the taxpayer’s business activities within the enterprise zone (as defined in Chapter 12.8 (commencing with Section 7070) of Division 7 of Title 1 of the Government Code) prior to the repeal of this section. That attributable loss shall be determined in accordance with Chapter 17 (commencing with Section 25101) of Part 11, modified for purposes of this subdivision, as follows:

(i) Loss shall be apportioned to the CTCZ by multiplying total loss from the business by a fraction, the numerator of which is the property factor plus the payroll factor, and the denominator of which is two.

(ii) “CTCZ” shall be substituted for “this state.”

(B) A net operating loss carryover shall be a deduction only with respect to the taxpayer’s business income attributable to the

1 *CTCZ as defined in Chapter 12.8 (commencing with Section 7070)*
 2 *of Division 7 of Title 1 of the Government Code.*

3 *(C) Attributable income is that portion of the taxpayer's*
 4 *California source business income that is apportioned to the CTCZ.*
 5 *For that purpose, the taxpayer's business income attributable to*
 6 *sources in this state first shall be determined in accordance with*
 7 *Chapter 17 (commencing with Section 25101) of Part 11. That*
 8 *business income shall be further apportioned to the CTCZ in*
 9 *accordance with Article 2 (commencing with Section 25120) of*
 10 *Chapter 17 of Part 11, modified for purposes of this subdivision*
 11 *as follows:*

12 *(i) Business income shall be apportioned to the CTCZ by*
 13 *multiplying the total California business income of the taxpayer*
 14 *by a fraction, the numerator of which is the property factor plus*
 15 *the payroll factor, and the denominator of which is two. For*
 16 *purposes of this clause:*

17 *(I) The property factor is a fraction, the numerator of which is*
 18 *the average value of the taxpayer's real and tangible personal*
 19 *property owned or rented and used in the CTCZ during the taxable*
 20 *year, and the denominator of which is the average value of all the*
 21 *taxpayer's real and tangible personal property owned or rented*
 22 *and used in this state during the taxable year.*

23 *(II) The payroll factor is a fraction, the numerator of which is*
 24 *the total amount paid by the taxpayer in the enterprise zone during*
 25 *the taxable year for compensation, and the denominator of which*
 26 *is the total compensation paid by the taxpayer in this state during*
 27 *the taxable year.*

28 *(ii) If a loss carryover is allowable pursuant to this section for*
 29 *any taxable year after the this section is repealed, the CTCZ shall*
 30 *be deemed to remain in existence for purposes of computing the*
 31 *limitation set forth in subparagraph (B) and allowing a net*
 32 *operating loss deduction.*

33 *(D) "CTCZ" means the Clean Technology Commerce Zone*
 34 *which shall be that area within the Coachella Valley.*

35 *(b) A taxpayer who qualifies as a "qualified taxpayer" under*
 36 *one or more sections shall, for the taxable year of the net operating*
 37 *loss and any taxable year to which that net operating loss may be*
 38 *carried, designate on the original return filed for each year the*
 39 *section which applies to that taxpayer with respect to that net*
 40 *operating loss. If the taxpayer is eligible to qualify under more*

1 *than one section, the designation is to be made after taking into*
2 *account subdivision (c).*

3 *(c) If a taxpayer is eligible to qualify under this section and*
4 *either Section 17276.4, 17276.5, or 17276.6 as a “qualified*
5 *taxpayer,” with respect to a net operating loss in a taxable year,*
6 *the taxpayer shall designate which section is to apply to the*
7 *taxpayer.*

8 *(d) Notwithstanding Section 17276, the amount of the loss*
9 *determined under this section or Section 17276.4, 17276.5, or*
10 *17276.6 shall be the only net operating loss allowed to be carried*
11 *over from that taxable year and the designation under subdivision*
12 *(b) shall be included in the election under Section 17276.1.*

13 *(e) This section shall remain in effect only until December 1,*
14 *2014, and as of that date is repealed.*

15 *SEC. 8. Section 23036 of the Revenue and Taxation Code is*
16 *amended to read:*

17 23036. (a) (1) The term “tax” includes any of the following:

18 (A) The tax imposed under Chapter 2 (commencing with Section
19 23101).

20 (B) The tax imposed under Chapter 3 (commencing with Section
21 23501).

22 (C) The tax on unrelated business taxable income, imposed
23 under Section 23731.

24 (D) The tax on—S “S” corporations imposed under Section
25 23802.

26 (2) The term “tax” does not include any amount imposed under
27 paragraph (1) of subdivision (e) of Section 24667 or paragraph (2)
28 of subdivision (f) of Section 24667.

29 (b) For purposes of Article 5 (commencing with Section 18661)
30 of Chapter 2, Article 3 (commencing with Section 19031) of
31 Chapter 4, Article 6 (commencing with Section 19101) of Chapter
32 4, and Chapter 7 (commencing with Section 19501) of Part 10.2,
33 and for purposes of Sections 18601, 19001, and 19005, the term
34 “tax” also includes all of the following:

35 (1) The tax on limited partnerships, imposed under Section
36 17935, the tax on limited liability companies, imposed under
37 Section 17941, and the tax on registered limited liability
38 partnerships and foreign limited liability partnerships imposed
39 under Section 17948.

1 (2) The alternative minimum tax imposed under Chapter 2.5
2 (commencing with Section 23400).

3 (3) The tax on built-in gains of ~~S~~ “S” corporations, imposed
4 under Section 23809.

5 (4) The tax on excess passive investment income of ~~S~~ “S”
6 corporations, imposed under Section 23811.

7 (c) Notwithstanding any other provision of this part, credits are
8 allowed against the “tax” in the following order:

9 (1) Credits that do not contain carryover provisions.

10 (2) Credits that, when the credit exceeds the “tax,” allow the
11 excess to be carried over to offset the “tax” in succeeding taxable
12 years, except for those credits that are allowed to reduce the “tax”
13 below the tentative minimum tax, as defined by Section 23455.
14 The order of credits within this paragraph shall be determined by
15 the Franchise Tax Board.

16 (3) The minimum tax credit allowed by Section 23453.

17 (4) Credits that are allowed to reduce the “tax” below the
18 tentative minimum tax, as defined by Section 23455.

19 (5) Credits for taxes withheld under Section 18662.

20 (d) Notwithstanding any other provision of this part, each of
21 the following applies:

22 (1) No credit may reduce the “tax” below the tentative minimum
23 tax (as defined by paragraph (1) of subdivision (a) of Section
24 23455), except the following credits:

25 (A) The credit allowed by former Section 23601 (relating to
26 solar energy).

27 (B) The credit allowed by former Section 23601.4 (relating to
28 solar energy).

29 (C) The credit allowed by former Section 23601.5 (relating to
30 solar energy).

31 (D) The credit allowed by Section 23609 (relating to research
32 expenditures).

33 (E) The credit allowed by former Section 23609.5 (relating to
34 clinical testing expenses).

35 (F) The credit allowed by Section 23610.5 (relating to
36 low-income housing).

37 (G) The credit allowed by former Section 23612 (relating to
38 sales and use tax credit).

39 (H) The credit allowed by Section 23612.2 (relating to enterprise
40 zone sales or use tax credit).

- 1 (I) The credit allowed by Section 23612.3 (relating to CTCZ
2 sales and use tax credit).
- 3 (J) The credit allowed by Section 23612.5 (relating to the CTCZ
4 hiring credit).
- 5 ~~(I)~~
- 6 (K) The credit allowed by former Section 23612.6 (relating to
7 Los Angeles Revitalization Zone sales tax credit).
- 8 ~~(J)~~
- 9 (L) The credit allowed by former Section 23622 (relating to
10 enterprise zone hiring credit).
- 11 ~~(K)~~
- 12 (M) The credit allowed by Section 23622.7 (relating to enterprise
13 zone hiring credit).
- 14 ~~(L)~~
- 15 (N) The credit allowed by former Section 23623 (relating to
16 program area hiring credit).
- 17 ~~(M)~~
- 18 (O) The credit allowed by former Section 23623.5 (relating to
19 Los Angeles Revitalization Zone hiring credit).
- 20 ~~(N)~~
- 21 (P) The credit allowed by former Section 23625 (relating to Los
22 Angeles Revitalization Zone hiring credit).
- 23 ~~(O)~~
- 24 (Q) The credit allowed by Section 23633 (relating to targeted
25 tax area sales or use tax credit).
- 26 ~~(P)~~
- 27 (R) The credit allowed by Section 23634 (relating to targeted
28 tax area hiring credit).
- 29 ~~(Q)~~
- 30 (S) The credit allowed by Section 23649 (relating to qualified
31 property).
- 32 (2) No credit against the tax may reduce the minimum franchise
33 tax imposed under Chapter 2 (commencing with Section 23101).
- 34 (e) Any credit which is partially or totally denied under
35 subdivision (d) is allowed to be carried over to reduce the “tax”
36 in the following year, and succeeding years if necessary, if the
37 provisions relating to that credit include a provision to allow a
38 carryover of the unused portion of that credit.
- 39 (f) Unless otherwise provided, any remaining carryover from a
40 credit that has been repealed or made inoperative is allowed to be

1 carried over under the provisions of that section as it read
2 immediately prior to being repealed or becoming inoperative.

3 (g) Unless otherwise provided, if two or more taxpayers share
4 in costs that would be eligible for a tax credit allowed under this
5 part, each taxpayer is eligible to receive the tax credit in proportion
6 to his or her respective share of the costs paid or incurred.

7 (h) Unless otherwise provided, in the case of an—S “S”
8 corporation, any credit allowed by this part is computed at the—S
9 “S” corporation level, and any limitation on the expenses
10 qualifying for the credit or limitation upon the amount of the credit
11 applies to the—S “S” corporation and to each shareholder.

12 (i) (1) With respect to any taxpayer that directly or indirectly
13 owns an interest in a business entity that is disregarded for tax
14 purposes pursuant to Section 23038 and any regulations thereunder,
15 the amount of any credit or credit carryforward allowable for any
16 taxable year attributable to the disregarded business entity is limited
17 in accordance with paragraphs (2) and (3).

18 (2) The amount of any credit otherwise allowed under this part,
19 including any credit carryover from prior years, that may be applied
20 to reduce the taxpayer’s “tax,” as defined in subdivision (a), for
21 the taxable year is limited to an amount equal to the excess of the
22 taxpayer’s regular tax (as defined in Section 23455), determined
23 by including income attributable to the disregarded business entity
24 that generated the credit or credit carryover, over the taxpayer’s
25 regular tax (as defined in Section 23455), determined by excluding
26 the income attributable to that disregarded business entity. No
27 credit is allowed if the taxpayer’s regular tax (as defined in Section
28 23455), determined by including the income attributable to the
29 disregarded business entity is less than the taxpayer’s regular tax
30 (as defined in Section 23455), determined by excluding the income
31 attributable to the disregarded business entity.

32 (3) If the amount of a credit allowed pursuant to the section
33 establishing the credit exceeds the amount allowable under this
34 subdivision in any taxable year, the excess amount may be carried
35 over to subsequent taxable years pursuant to subdivisions (d), (e),
36 and (f).

37 (j) (1) Unless otherwise specifically provided, in the case of a
38 taxpayer that is a partner or shareholder of an eligible pass-through
39 entity described in paragraph (2), any credit passed through to the
40 taxpayer in the taxpayer’s first taxable year beginning on or after

1 the date the credit is no longer operative may be claimed by the
2 taxpayer in that taxable year, notwithstanding the repeal of the
3 statute authorizing the credit prior to the close of that taxable year.

4 (2) For purposes of this subdivision, “eligible pass-through
5 entity” means any partnership or S “S” corporation that files its
6 return on a fiscal year basis pursuant to Section 18566, and that is
7 entitled to a credit pursuant to this part for the taxable year that
8 begins during the last year a credit is operative.

9 (3) This subdivision applies to credits that become inoperative
10 on or after the operative date of the act adding this subdivision.

11 SEC. 9. Section 23612.3 is added to the Revenue and Taxation
12 Code, to read:

13 23612.3. (a) For each taxable year beginning on or after
14 January 1, 2009, and before January 1, 2014, there shall be
15 allowed a credit against the “tax,” as defined by Section 23036,
16 an amount, not to exceed the limitation in subdivision (f), that is
17 equal to the sales or use tax paid or incurred by the qualified
18 taxpayer in connection with the purchase of qualified property.

19 (b) For purposes of this section:

20 (1) (A) “Qualified property” means any property that is used
21 exclusively in the CTCZ.

22 (2) “Qualified taxpayer” means a person or entity engaged in
23 a trade or business that primarily develops, manufactures,
24 produces, distributes, installs, delivers, or in any other manner
25 advances this state’s goals of renewable energy usage.

26 (3) “CTCZ” means the Clean Technology Commerce Zone
27 which shall be that area within the Coachella Valley.

28 (c) (1) In the case where a credit is allowed for qualified
29 property under more than one section in this part, the qualified
30 taxpayer shall make an election, on the return filed for each year,
31 as to which section applies to that qualified taxpayer.

32 (2) Any election made under this section and any specification
33 contained in that election, may not be revoked except with the
34 consent of the Franchise Tax Board.

35 (d) In the case where the credit allowed under this section
36 exceeds the limitation imposed by subdivision (f) for the taxable
37 year, that portion of the credit that exceeds the limitation imposed
38 by subdivision (f) may be carried over and added to this credit in
39 succeeding taxable years until the credit is exhausted. The credit
40 shall be applied first to the earliest taxable years possible.

1 (e) Any qualified taxpayer who elects to be subject to this section
2 shall not be entitled to increase the basis of the property as
3 otherwise required by Section 164(a) of the Internal Revenue Code
4 with respect of the sales and use tax paid or incurred in connection
5 with the purchase of qualified property.

6 (f) The amount of the credit provided by this section, including
7 any credit carryover from prior years, in any taxable year shall
8 not exceed the amount of tax that would be imposed on the income
9 attributable to business activities of the qualified taxpayer within
10 the CTCZ as if that attributable income represented all of the
11 income of the qualified taxpayer subject to tax under this part. In
12 the event that a credit carryover is allowable under subdivision
13 (d) for any taxable year after this section is repealed, the CTCZ
14 shall be deemed to remain in existence for purposes of computing
15 this limitation. The amount of that attributable income shall be
16 determined in accordance with Article 2 (commencing with Section
17 25120) of Chapter 17 of Part 11, modified as follows:

18 (1) Attributable income shall be that portion of the qualified
19 taxpayer's California source business income that is apportioned
20 to the CTCZ.

21 (2) Income shall be apportioned to the CTCZ by multiplying
22 total income from the business by a fraction, the numerator of
23 which is the property factor plus the payroll factor, and the
24 denominator of which is two.

25 (3) CTCZ shall be substituted for "this state."

26 (g) If the qualified property is of the type that its cost must be
27 chargeable to a capital account and it is disposed of or no longer
28 used by the qualified taxpayer in the CTCZ at any time before the
29 close of the second taxable year after the property is placed in
30 service, the amount of the credit previously claimed shall be added
31 to the qualified taxpayer's tax liability in the taxable year of that
32 disposition or nonuse.

33 (h) This section shall remain in effect only until December 1,
34 2014, and as of that date is repealed.

35 SEC. 10. Section 23612.5 is added to the Revenue and Taxation
36 Code, to read:

37 23612.5. (a) For each income year beginning on or after
38 January 1, 2009, and before January 1, 2014, there shall be
39 allowed as a credit against the "tax," as defined by Section 23036,
40 to a qualified taxpayer for hiring a qualified employee during the

1 income year. The credit shall be equal to the sum of each of the
2 following:

3 (1) Fifty percent for qualified wages in the first year of
4 employment.

5 (2) Forty percent for qualified wages in the second year of
6 employment.

7 (3) Thirty percent for qualified wages in the third year of
8 employment.

9 (4) Twenty percent for qualified wages in the fourth year of
10 employment.

11 (5) Ten percent for qualified wages in the fifth year of
12 employment.

13 (b) For purposes of this section:

14 (1) “Qualified wages” means the wages paid or incurred by
15 the employer during the taxable year to qualified employees.

16 “Qualified wages” means that portion of hourly wages which does
17 not exceed 150 percent of the minimum wage.

18 (2) “Qualified years one through five wages” means, with
19 respect to any individual, qualified wages received during the
20 60-month period beginning with the day the individual commences
21 employment within the CTCZ.

22 (3) “Minimum wage” means the wage established by the
23 Industrial Welfare Commission as provided for in Chapter 1
24 (commencing with Section 1171) of Part 4 of Division 2 of the
25 Labor Code.

26 (4) “Qualified taxpayer” means a person or entity engaged in
27 a trade or business that primarily develops, manufactures,
28 produces, distributes, installs, delivers, or in any other manner
29 advances this state’s goals of renewable energy usage.

30 (5) “Qualified employee” means an individual:

31 (A) At least 90 percent of whose services for the qualified
32 taxpayer during the taxable year are directly related to the conduct
33 of the qualified taxpayer’s trade or business located in the CTCZ.

34 (B) Who performs at least 50 percent of his or her services for
35 the qualified taxpayer during the taxable year in the CTCZ.

36 (6) “CTCZ” means the Clean Energy Commerce Zone which
37 shall be that area within the Coachella Valley.

38 (7) (A) All employees of trades or businesses that are not
39 incorporated and that are under common control shall be treated
40 as employed by a single employer.

(B) The credit, if any, allowable by this section with respect to each trade or business shall be determined by reference to its proportionate share of the qualified wages giving rise to the credit.

The regulations prescribed under this paragraph shall be based on principles similar to the principles that apply in the case of controlled groups of corporations as specified in paragraph (8) of subdivision (b) of Section 23622.5.

(8) If an employer acquires the major portion of a trade or business of another employer (hereinafter in this paragraph referred to as the “predecessor”) or the major portion of a separate unit of a trade or business of a predecessor, then, for purposes of applying this section, except subdivision (c), for any calendar year ending after that acquisition, the employment relationship between an employee and an employer shall not be treated as terminated if the employee continues to be employed in that trade or business.

(9) Nothing in this section constitutes an expansion of the scope of practice of a licensee as designated under a current law.

(c) (1) If the employment of any employee, with respect to whom qualified wages are taken into account under subdivision (a) is terminated by the qualified taxpayer at any time during the first 270 days of that employment, whether or not consecutive, or before the close of the 270th calendar day after the day in which that employee completes 90 days of employment with the qualified taxpayer, the tax imposed by this part for the taxable year in which that employment is terminated shall be increased by an amount determined under those regulations equal to the credit allowed under subdivision (a) for that taxable year and all prior taxable years attributable to qualified wages paid or incurred with respect to that employee.

(2) (A) Paragraph (1) shall not apply to any of the following:

(i) A termination of employment of an employee who voluntarily leaves the employment of the qualified taxpayer.

(ii) A termination of employment of an individual who, before the close of the period referred to in paragraph (1), becomes disabled to perform the services of that employment, unless that disability is removed before the close of that period and the qualified taxpayer fails to offer reemployment to that individual.

(iii) A termination of employment of an individual, if it is determined under the applicable employment compensation

1 *provisions that the termination was due to the misconduct of that*
2 *individual.*

3 *(iv) A termination of employment of an individual due to a*
4 *substantial reduction in the trade or business operations of the*
5 *qualified taxpayer.*

6 *(v) A termination of employment of an individual, if that*
7 *individual is replaced by other qualified employees so as to create*
8 *a net increase in both the number of employees and the hours of*
9 *employment.*

10 *(B) For purposes of paragraph (1), the employment relationship*
11 *between the qualified taxpayer and an employee shall not be*
12 *treated as terminated by reason of a mere change in the form of*
13 *conducting the trade or business of the qualified taxpayer, if the*
14 *employee continues to be employed in that trade or business and*
15 *the qualified taxpayer retains a substantial interest in that trade*
16 *or business.*

17 *(3) Any increase in tax under paragraph (1) shall not be treated*
18 *as tax imposed by this part for purposes of determining the amount*
19 *of any credit allowable under this part.*

20 *(d) In the case of an estate or trust:*

21 *(1) The qualified wages for any taxable year shall be*
22 *apportioned between the estate or trust and the beneficiaries on*
23 *the basis of the California income of the estate or trust allocable*
24 *to each.*

25 *(2) Any beneficiary to whom any qualified wages have been*
26 *apportioned under paragraph (1) shall be treated, for purposes*
27 *of this part, as the employer with respect to those qualified wages.*

28 *(e) The credit shall be reduced by the hiring credit allowed*
29 *under Sections 23622.7 and 23634. The credit shall also be reduced*
30 *by the federal credit allowed under Section 51 of the Internal*
31 *Revenue Code.*

32 *In addition, any deduction otherwise allowed under this part for*
33 *the wages or salaries paid or incurred by the qualified taxpayer*
34 *upon which the credit is based shall be reduced by the amount of*
35 *the credit.*

36 *(f) In the case where the credit allowed under this section*
37 *exceeds the limitation imposed by subdivision (g) for the taxable*
38 *year, that portion of the credit that exceeds the limitation imposed*
39 *by subdivision (g) may be carried over and added to this credit in*
40 *succeeding taxable years until the credit is exhausted.*

1 (g) *The amount of the credit provided by this section, including*
2 *any credit carryover from prior years, in any taxable year shall*
3 *not exceed the amount of tax that would be imposed on the income*
4 *attributable to business activities of the qualified taxpayer within*
5 *the CTCZ as if that attributable income represented all of the*
6 *income of the qualified taxpayer subject to tax under this part. In*
7 *the event that a credit carryover is allowable under subdivision*
8 *(f) for any taxable year after this section is repealed, the CTCZ*
9 *shall be deemed to remain in existence for purposes of computing*
10 *this limitation. The amount of that attributable income shall be*
11 *determined in accordance with Article 2 (commencing with Section*
12 *25120) of Chapter 17 of Part 11, modified as follows:*

13 (1) *Income shall be apportioned to the CTCZ by multiplying*
14 *total income from the business by a fraction, the numerator of*
15 *which is the property factor plus the payroll factor, and the*
16 *denominator of which is two.*

17 (2) *CTCZ shall be substituted for “this state.”*

18 (h) *This section shall remain in effect only until December 1,*
19 *2014, and as of that date is repealed.*

20 SEC. 10.5. *Section 24342 is added to the Revenue and Taxation*
21 *Code, to read:*

22 24342. (a) *For each taxable year beginning on or after*
23 *January 1, 2009, and before January 1, 2014, any lender that loans*
24 *money to a qualified taxpayer, as defined by Section 23612.3, for*
25 *use by that qualified taxpayer in the Clean Technology Commerce*
26 *Zone for purposes of advancing clean technology, shall be allowed*
27 *a deduction in an amount equal to the net interest earned on that*
28 *loan during the taxable year.*

29 (b) *This section shall remain in effect only until December 1,*
30 *2014, and as of that date is repealed.*

31 SEC. 11. *Section 24356.9 is added to the Revenue and Taxation*
32 *Code, to read:*

33 24356.9. (a) *For each taxable year beginning on or after*
34 *January 1, and before January 1, 2014, a taxpayer may elect to*
35 *treat 40 percent of the cost of any Section 24356.9 property as an*
36 *expense that is not chargeable to the capital account. Any cost so*
37 *treated shall be allowed as a deduction for the taxable year in*
38 *which the taxpayer places the Section 24356.9 property in service.*

39 (b) (1) *An election under this section for any taxable year shall*
40 *meet both of the following requirements:*

1 (A) Specify the items of Section 24356.9 property to which the
2 election applies and the portion of the cost of each of those items
3 that is to be taken into account under subdivision (a).

4 (B) Be made on the taxpayer's return of the tax imposed by this
5 part for the taxable year.

6 (2) Any election made under this section, and any specification
7 contained in that election, may not be revoked except with the
8 consent of the Franchise Tax Board.

9 (c) (1) For purposes of this section, "Section 24356.9 property"
10 means any recovery property that is:

11 (A) Section 1245 property (as defined in Section 1245(a)(3) of
12 the Internal Revenue Code).

13 (B) Purchased by the taxpayer for exclusive use in a trade or
14 business conducted within the CTCZ.

15 (C) Purchased before the date the CTCZ designation expires,
16 is no longer binding, or becomes inoperative.

17 (2) For purposes of paragraph (1), "purchase" means any
18 acquisition of property, but only if all of the following apply:

19 (A) The property is not acquired from a person whose
20 relationship to the person acquiring it would result in the
21 disallowance of losses under Section 267 or 707(b) of the Internal
22 Revenue Code (but, in applying Sections 267(b) and 267(c) of the
23 Internal Revenue Code for purposes of this section, Section
24 267(c)(4) of the Internal Revenue Code shall be treated as
25 providing that the family of an individual shall include only his or
26 her spouse, ancestors, and lineal descendants).

27 (B) The property is not acquired by one component member of
28 an affiliated group from another component member of the same
29 affiliated group.

30 (C) The basis of the property in the hands of the person
31 acquiring it is not determined in whole or in part by reference to
32 the adjusted basis of that property in the hands of the person from
33 whom acquired.

34 (3) For purposes of this section, the cost of property does not
35 include so much of the basis of that property as is determined by
36 reference to the basis of other property held at any time by the
37 person acquiring that property.

38 (4) This section shall not apply to any property for which the
39 taxpayer may not make an election for the taxable year under

1 *Section 179 of the Internal Revenue Code because of the provisions*
2 *of Section 179(d) of the Internal Revenue Code.*

3 *(5) For purposes of subdivision (b), both of the following apply:*

4 *(A) All members of an affiliated group shall be treated as one*
5 *taxpayer.*

6 *(B) The taxpayer shall apportion the dollar limitation contained*
7 *in subdivision (f) among the component members of the affiliated*
8 *group in whatever manner the board shall by regulations prescribe.*

9 *(6) For purposes of paragraphs (2) and (5), “affiliated group”*
10 *has the meaning assigned to it by Section 1504 of the Internal*
11 *Revenue Code, except that, for these purposes, the phrase “more*
12 *than 50 percent” shall be substituted for the phrase “at least 80*
13 *percent” each place it appears in Section 1504(a) of the Internal*
14 *Revenue Code.*

15 *(7) This section shall not apply to any property described in*
16 *Section 168(f) of the Internal Revenue Code.*

17 *(8) In the case of an “S” corporation, the dollar limitation*
18 *contained in subdivision (f) shall be applied at the entity level and*
19 *at the shareholder level.*

20 *(d) For purposes of this section:*

21 *(1) “CTCZ” means the Clean Technology Commerce Zone*
22 *which shall be that area within the Coachella Valley.*

23 *(2) “Taxpayer” means a corporation that conducts a trade or*
24 *business within the CTCZ and, for the first two taxable years, has*
25 *a net increase in jobs (defined as 2,000 paid hours per employee*
26 *per year) of one or more employees in the CTCZ.*

27 *(A) The net increase in the number of jobs shall be determined*
28 *by subtracting the total number of full-time employees (defined as*
29 *2,000 paid hours per employee per year) the taxpayer employed*
30 *in this state in the taxable year prior to commencing business*
31 *operations in the CTCZ from the total number of full-time*
32 *employees the taxpayer employed in this state during the second*
33 *taxable year after commencing business operations in the CTCZ.*
34 *For taxpayers who commence doing business in this state with*
35 *their CTCZ business operation, the number of employees for the*
36 *taxable year prior to commencing business operations in the CTCZ*
37 *shall be zero. If the taxpayer has a net increase in jobs in the state,*
38 *the credit shall be allowed only if one or more full-time employees*
39 *is employed within the CTCZ.*

(B) The total number of employees employed in the CTCZ shall equal the sum of both of the following:

(i) The total number of hours worked in the CTCZ for the taxpayer by employees (not to exceed 2,000 hours per employee) who are paid an hourly wage divided by 2,000.

(ii) The total number of months worked in the CTCZ for the taxpayer by employees who are salaried employees divided by 12.

(C) In the case of a taxpayer that first commences doing business in the CTCZ during the taxable year, for purposes of clauses (i) and (ii), respectively, of subparagraph (B), the divisors “2,000” and “12” shall be multiplied by a fraction, the numerator of which is the number of months of the taxable year that the taxpayer was doing business in the CTCZ and the denominator of which is 12.

(e) Any taxpayer who elects to be subject to this section shall not be entitled to claim additional depreciation pursuant to Section 24356 with respect to any property that constitutes Section 24356.9 property.

(f) The aggregate cost of all Section 24356.9 property that may be taken into account under subdivision (a) for any taxable year shall not exceed the following applicable amounts:

	The applicable amount is:
2009 taxable year.....	\$100,000
1st taxable year thereafter.....	100,000
2nd taxable year thereafter.....	75,000
3rd taxable year thereafter.....	75,000
Each taxable year thereafter.....	50,000

(g) This section shall apply only to property that is used exclusively in a trade or business conducted within the CTCZ.

(h) (1) Any amounts deducted under subdivision (a) with respect to property that ceases to be used in the trade or business within the CTCZ at any time before the close of the second taxable year after the property was placed in service shall be included in income for that year.

(2) At the close of the second taxable year, if the taxpayer has not increased the number of its employees as determined by paragraph (2) of subdivision (d), then the amount of the deduction

1 *previously claimed shall be added to the taxpayer's net income*
2 *for the taxpayer's second taxable year.*

3 *(i) Any taxpayer who elects to be subject to this section shall*
4 *not be entitled to claim for the same property the deduction under*
5 *Section 179 of the Internal Revenue Code, relating to an election*
6 *to expense certain depreciable business assets.*

7 *(j) This section shall remain in effect only until December 1,*
8 *2014, and as of that date is repealed.*

9 *SEC. 12. Section 24416 of the Revenue and Taxation Code is*
10 *amended to read:*

11 24416. Except as provided in Sections 24416.1, 24416.2,
12 24416.4, 24416.5, 24416.6, ~~and 24416.7~~ 24416.7, and 24416.8, a
13 net operating loss deduction shall be allowed in computing net
14 income under Section 24341 and shall be determined in accordance
15 with Section 172 of the Internal Revenue Code, except as otherwise
16 provided.

17 (a) (1) Net operating losses attributable to taxable years
18 beginning before January 1, 1987, shall not be allowed.

19 (2) A net operating loss shall not be carried forward to any
20 taxable year beginning before January 1, 1987.

21 (b) (1) Except as provided in paragraphs (2) and (3), the
22 provisions of Section 172(b)(2) of the Internal Revenue Code,
23 relating to the amount of carryovers, shall be modified so that the
24 applicable percentage of the entire amount of the net operating
25 loss for any taxable year shall be eligible for carryover to any
26 subsequent taxable year. For purposes of this subdivision, the
27 applicable percentage shall be:

28 (A) Fifty percent for any taxable year beginning before January
29 1, 2000.

30 (B) Fifty-five percent for any taxable year beginning on or after
31 January 1, 2000, and before January 1, 2002.

32 (C) Sixty percent for any taxable year beginning on or after
33 January 1, 2002, and before January 1, 2004.

34 (D) One hundred percent for any taxable year beginning on or
35 after January 1, 2004.

36 (2) In the case of a taxpayer who has a net operating loss in any
37 taxable year beginning on or after January 1, 1994, and who
38 operates a new business during that taxable year, each of the
39 following shall apply to each loss incurred during the first three
40 taxable years of operating the new business:

1 (A) If the net operating loss is equal to or less than the net loss
2 from the new business, 100 percent of the net operating loss shall
3 be carried forward as provided in subdivision (e).

4 (B) If the net operating loss is greater than the net loss from the
5 new business, the net operating loss shall be carried over as
6 follows:

7 (i) With respect to an amount equal to the net loss from the new
8 business, 100 percent of that amount shall be carried forward as
9 provided in subdivision (e).

10 (ii) With respect to the portion of the net operating loss that
11 exceeds the net loss from the new business, the applicable
12 percentage of that amount shall be carried forward as provided in
13 subdivision (d).

14 (C) For purposes of Section 172(b)(2) of the Internal Revenue
15 Code, the amount described in clause (ii) of subparagraph (B) shall
16 be absorbed before the amount described in clause (i) of
17 subparagraph (B).

18 (3) In the case of a taxpayer who has a net operating loss in any
19 taxable year beginning on or after January 1, 1994, and who
20 operates an eligible small business during that taxable year, each
21 of the following shall apply:

22 (A) If the net operating loss is equal to or less than the net loss
23 from the eligible small business, 100 percent of the net operating
24 loss shall be carried forward to the taxable years specified in
25 paragraph (1) of subdivision (e).

26 (B) If the net operating loss is greater than the net loss from the
27 eligible small business, the net operating loss shall be carried over
28 as follows:

29 (i) With respect to an amount equal to the net loss from the
30 eligible small business, 100 percent of that amount shall be carried
31 forward as provided in subdivision (e).

32 (ii) With respect to that portion of the net operating loss that
33 exceeds the net loss from the eligible small business, the applicable
34 percentage of that amount shall be carried forward as provided in
35 subdivision (e).

36 (C) For purposes of Section 172(b)(2) of the Internal Revenue
37 Code, the amount described in clause (ii) of subparagraph (B) shall
38 be absorbed before the amount described in clause (i) of
39 subparagraph (B).

1 (4) In the case of a taxpayer who has a net operating loss in a
2 taxable year beginning on or after January 1, 1994, and who
3 operates a business that qualifies as both a new business and an
4 eligible small business under this section, that business shall be
5 treated as a new business for the first three taxable years of the
6 new business.

7 (5) In the case of a taxpayer who has a net operating loss in a
8 taxable year beginning on or after January 1, 1994, and who
9 operates more than one business, and more than one of those
10 businesses qualifies as either a new business or an eligible small
11 business under this section, paragraph (2) shall be applied first,
12 except that if there is any remaining portion of the net operating
13 loss after application of clause (i) of subparagraph (B) of paragraph
14 (2), paragraph (3) shall be applied to the remaining portion of the
15 net operating loss as though that remaining portion of the net
16 operating loss constituted the entire net operating loss.

17 (6) For purposes of this section, “net loss” means the amount
18 of net loss after application of Sections 465 and 469 of the Internal
19 Revenue Code.

20 (c) For any taxable year in which the taxpayer has in effect a
21 water’s-edge election under Section 25110, the deduction of a net
22 operating loss carryover shall be denied to the extent that the net
23 operating loss carryover was determined by taking into account
24 the income and factors of an affiliated corporation in a combined
25 report whose income and apportionment factors would not have
26 been taken into account if a water’s-edge election under Section
27 25110 had been in effect for the taxable year in which the loss was
28 incurred.

29 (d) Net operating loss carrybacks shall not be allowed.

30 (e) (1) (A) For a net operating loss for any taxable year
31 beginning on or after January 1, 1987, and before January 1, 2000,
32 Section 172(b)(1)(A)(ii) of the Internal Revenue Code, relating to
33 years to which net operating losses may be carried, is modified to
34 substitute “five taxable years” in lieu of “20 years” except as
35 otherwise provided in paragraphs (2), (3), and (4).

36 (B) For a net operating loss for any income year beginning on
37 or after January 1, 2000, Section 172(b)(1)(A)(ii) of the Internal
38 Revenue Code, relating to years to which net operating losses may
39 be carried, is modified to substitute “10 taxable years” in lieu of
40 “20 taxable years.”

(2) For any income year beginning before January 1, 2000, in the case of a “new business,” the “five taxable years” referred to in paragraph (1) shall be modified to read as follows:

(A) “Eight taxable years” for a net operating loss attributable to the first taxable year of that new business.

(B) “Seven taxable years” for a net operating loss attributable to the second taxable year of that new business.

(C) “Six taxable years” for a net operating loss attributable to the third taxable year of that new business.

(3) For any carryover of a net operating loss for which a deduction is denied by Section 24416.3, the carryover period specified in this subdivision shall be extended as follows:

(A) By one year for a net operating loss attributable to taxable years beginning in 1991.

(B) By two years for a net operating loss attributable to taxable years beginning prior to January 1, 1991.

(4) The net operating loss attributable to taxable years beginning on or after January 1, 1987, and before January 1, 1994, shall be a net operating loss carryover to each of the 10 taxable years following the year of the loss if it is incurred by a corporation that was either of the following:

(A) Under the jurisdiction of the court in a Title 11 or similar case at any time prior to January 1, 1994. The loss carryover provided in the preceding sentence shall not apply to any loss incurred in an income year after the taxable year during which the corporation is no longer under the jurisdiction of the court in a Title 11 or similar case.

(B) In receipt of assets acquired in a transaction that qualifies as a tax-free reorganization under Section 368(a)(1)(G) of the Internal Revenue Code.

(f) For purposes of this section:

(1) “Eligible small business” means any trade or business that has gross receipts, less returns and allowances, of less than one million dollars (\$1,000,000) during the income year.

(2) Except as provided in subdivision (g), “new business” means any trade or business activity that is first commenced in this state on or after January 1, 1994.

(3) “Title 11 or similar case” shall have the same meaning as in Section 368(a)(3) of the Internal Revenue Code.

(4) In the case of any trade or business activity conducted by a partnership or an ~~“S corporation,”~~ *“S” corporation*, paragraphs (1) and (2) shall be applied to the partnership or ~~“S corporation.”~~ *“S” corporation*.

(g) For purposes of this section, in determining whether a trade or business activity qualifies as a new business under paragraph (2) of subdivision (e), the following rules shall apply:

(1) In any case where a taxpayer purchases or otherwise acquires all or any portion of the assets of an existing trade or business (irrespective of the form of entity) that is doing business in this state (within the meaning of Section 23101), the trade or business thereafter conducted by the taxpayer (or any related person) shall not be treated as a new business if the aggregate fair market value of the acquired assets (including real, personal, tangible, and intangible property) used by the taxpayer (or any related person) in the conduct of its trade or business exceeds 20 percent of the aggregate fair market value of the total assets of the trade or business being conducted by the taxpayer (or any related person). For purposes of this paragraph only, the following rules shall apply:

(A) The determination of the relative fair market values of the acquired assets and the total assets shall be made as of the last day of the first taxable year in which the taxpayer (or any related person) first uses any of the acquired trade or business assets in its business activity.

(B) Any acquired assets that constituted property described in Section 1221(1) of the Internal Revenue Code in the hands of the transferor shall not be treated as assets acquired from an existing trade or business, unless those assets also constitute property described in Section 1221(1) of the Internal Revenue Code in the hands of the acquiring taxpayer (or related person).

(2) In any case where a taxpayer (or any related person) is engaged in one or more trade or business activities in this state, or has been engaged in one or more trade or business activities in this state within the preceding 36 months (“prior trade or business activity”), and thereafter commences an additional trade or business activity in this state, the additional trade or business activity shall only be treated as a new business if the additional trade or business activity is classified under a different division of the Standard Industrial Classification (SIC) Manual published by the United States Office of Management and Budget, 1987 edition, than are

1 any of the taxpayer's (or any related person's) current or prior
2 trade or business activities.

3 (3) In any case where a taxpayer, including all related persons,
4 is engaged in trade or business activities wholly outside of this
5 state and the taxpayer first commences doing business in this state
6 (within the meaning of Section 23101) after December 31, 1993
7 (other than by purchase or other acquisition described in paragraph
8 (1)), the trade or business activity shall be treated as a new business
9 under paragraph (2) of subdivision (e).

10 (4) In any case where the legal form under which a trade or
11 business activity is being conducted is changed, the change in form
12 shall be disregarded and the determination of whether the trade or
13 business activity is a new business shall be made by treating the
14 taxpayer as having purchased or otherwise acquired all or any
15 portion of the assets of an existing trade or business under the rules
16 of paragraph (1) of this subdivision.

17 (5) "Related person" shall mean any person that is related to
18 the taxpayer under either Section 267 or 318 of the Internal
19 Revenue Code.

20 (6) "Acquire" shall include any transfer, whether or not for
21 consideration.

22 (7) (A) For taxable years beginning on or after January 1, 1997,
23 the term "new business" shall include any taxpayer that is engaged
24 in biopharmaceutical activities or other biotechnology activities
25 that are described in Codes 2833 to 2836, inclusive, of the Standard
26 Industrial Classification (SIC) Manual published by the United
27 States Office of Management and Budget, 1987 edition, and as
28 further amended, and that has not received regulatory approval for
29 any product from the United States Food and Drug Administration.

30 (B) For purposes of this paragraph:

31 (i) "Biopharmaceutical activities" means those activities that
32 use organisms or materials derived from organisms, and their
33 cellular, subcellular, or molecular components, in order to provide
34 pharmaceutical products for human or animal therapeutics and
35 diagnostics. Biopharmaceutical activities make use of living
36 organisms to make commercial products, as opposed to
37 pharmaceutical activities that make use of chemical compounds
38 to produce commercial products.

39 (ii) "Other biotechnology activities" means activities consisting
40 of the application of recombinant DNA technology to produce

1 commercial products, as well as activities regarding pharmaceutical
2 delivery systems designed to provide a measure of control over
3 the rate, duration, and site of pharmaceutical delivery.

4 (h) For purposes of corporations whose net income is determined
5 under Chapter 17 (commencing with Section 25101), Section
6 25108 shall apply to each of the following:

7 (1) The amount of net operating loss incurred in any taxable
8 year that may be carried forward to another taxable year.

9 (2) The amount of any loss carry forward that may be deducted
10 in any taxable year.

11 (i) The provisions of Section 172(b)(1)(D) of the Internal
12 Revenue Code, relating to bad debt losses of commercial banks,
13 shall not be applicable.

14 (j) The Franchise Tax Board may prescribe appropriate
15 regulations to carry out the purposes of this section, including any
16 regulations necessary to prevent the avoidance of the purposes of
17 this section through splitups, shell corporations, partnerships, tiered
18 ownership structures, or otherwise.

19 (k) The Franchise Tax Board may reclassify any net operating
20 loss carryover determined under either paragraph (2) or (3) of
21 subdivision (b) as a net operating loss carryover under paragraph
22 (1) of subdivision (b) upon a showing that the reclassification is
23 necessary to prevent evasion of the purposes of this section.

24 (l) Except as otherwise provided, the amendments made by
25 Chapter 107 of the Statutes of 2000 shall apply to net operating
26 losses for taxable years beginning on or after January 1, 2000.

27 *SEC. 13. Section 24416.1 of the Revenue and Taxation Code*
28 *is amended to read:*

29 24416.1. (a) A qualified taxpayer, as defined in Section
30 24416.2, 24416.4, 24416.5, 24416.6, ~~or 24416.7~~ 24416.7, or
31 24416.8, may elect to take the deduction provided by Section 172
32 of the Internal Revenue Code, relating to the net operating loss
33 deduction, as modified by Section 24416, in computing net income
34 under Section 24341, with the following exceptions to Section
35 24416:

36 (1) Subdivision (a) of Section 24416, relating to years in which
37 allowable losses are sustained, shall not be applicable.

38 (2) Subdivision (b) of Section 24416, relating to the 50-percent
39 reduction of losses, shall not be applicable.

(3) The provisions of subparagraphs (B) and (C) of Section 172(b)(1) of the Internal Revenue Code shall not apply. To the extent applicable to California law, net operating losses attributable to entities with losses described by Section 172(b)(1)(J) shall be applied in accordance with Section 172(b)(1)(A) and (B) of the Internal Revenue Code.

(b) Corporations whose income is subject to the provisions of Section 25101 or 25101.15 shall make the computations required by Section 25108.

(c) The election to compute the net operating loss under this section shall be made in a statement attached to the original return, timely filed for the year in which the net operating loss is incurred and shall be irrevocable. In addition to the exceptions specified in subdivision (a), Section 24416.2, 24416.4, 24416.5, 24416.6, ~~or 24416.7~~ 24416.7, or 24416.8, as appropriate, shall be applicable.

(d) Any carryover of a net operating loss sustained by a qualified taxpayer, as defined in subdivision (a) or (b) of Section 24416.2 as that section read immediately prior to January 1, 1997, shall, if previously elected, continue to be a deduction, as provided in subdivision (a), applied as if the provisions of subdivision (a) or (b) of Section 24416.2, as that section read prior to January 1, 1997, still applied.

SEC. 14. Section 24416.8 is added to the Revenue and Taxation Code, to read:

24416.8. (a) For each taxable year beginning on or after January 1, 2009, and before January 1, 2014, the term “qualified taxpayer” as used in Section 24416.1 includes a corporation engaged in the conduct of a trade or business within the CTCZ. For purposes of this subdivision, all of the following shall apply:

(1) A net operating loss shall not be a net operating loss carryback for any taxable year and a net operating loss for any taxable year beginning on or after January 1, 2009, and before January 1, 2014, shall be a net operating loss carryover to each of the 15 taxable years following the taxable year of loss.

(2) For purposes of this subdivision:

(A) “Net operating loss” means the loss determined under Section 172 of the Internal Revenue Code, as modified by Section 24416.1, attributable to the taxpayer’s business activities within the enterprise zone (as defined in Chapter 12.8 (commencing with Section 7070) of Division 7 of Title 1 of the Government Code)

1 *prior to the repeal of this section. That attributable loss shall be*
2 *determined in accordance with Chapter 17 (commencing with*
3 *Section 25101), modified for purposes of this subdivision as*
4 *follows:*

5 *(i) Loss shall be apportioned to the CTCZ by multiplying total*
6 *loss from the business by a fraction, the numerator of which is the*
7 *property factor plus the payroll factor, and the denominator of*
8 *which is two.*

9 *(ii) “The CTCZ” shall be substituted for “this state.”*

10 *(B) A net operating loss carryover shall be a deduction only*
11 *with respect to the taxpayer’s business income attributable to the*
12 *CTCZ as defined in Chapter 12.8 (commencing with Section 7070)*
13 *of Division 7 of Title 1 of the Government Code.*

14 *(C) Attributable income is that portion of the taxpayer’s*
15 *California source business income that is apportioned to the CTCZ.*
16 *For that purpose, the taxpayer’s business income attributable to*
17 *sources in this state first shall be determined in accordance with*
18 *Chapter 17 (commencing with Section 25101). That business*
19 *income shall be further apportioned to the CTCZ in accordance*
20 *with Article 2 (commencing with Section 25120) of Chapter 17,*
21 *modified for purposes of this subdivision as follows:*

22 *(i) Business income shall be apportioned to the CTCZ by*
23 *multiplying the total California business income of the taxpayer*
24 *by a fraction, the numerator of which is the property factor plus*
25 *the payroll factor, and the denominator of which is two. For*
26 *purposes of this clause:*

27 *(I) The property factor is a fraction, the numerator of which is*
28 *the average value of the taxpayer’s real and tangible personal*
29 *property owned or rented and used in the CTCZ during the taxable*
30 *year, and the denominator of which is the average value of all the*
31 *taxpayer’s real and tangible personal property owned or rented*
32 *and used in this state during the taxable year.*

33 *(II) The payroll factor is a fraction, the numerator of which is*
34 *the total amount paid by the taxpayer in the CTCZ during the*
35 *taxable year for compensation, and the denominator of which is*
36 *the total compensation paid by the taxpayer in this state during*
37 *the taxable year.*

38 *(ii) If a loss carryover is allowable pursuant to this section for*
39 *any taxable year after this section is repealed, the CTCZ shall be*
40 *deemed to remain in existence for purposes of computing the*

1 limitation set forth in subparagraph (B) and allowing a net
2 operating loss deduction.

3 (D) “CTCZ” means the Clean Technology Commerce Zone
4 which shall be that area within the Coachella Valley.

5 (b) A taxpayer who qualifies as a “qualified taxpayer” under
6 one or more sections shall, for the taxable year of the net operating
7 loss and any taxable year to which that net operating loss may be
8 carried, designate on the original return filed for each year the
9 section which applies to that taxpayer with respect to that net
10 operating loss. If the taxpayer is eligible to qualify under more
11 than one section, the designation is to be made after taking into
12 account subdivision (c).

13 (c) If a taxpayer is eligible to qualify under this section and
14 either Section 24416.4, 24416.5, or 24416.6 as a “qualified
15 taxpayer,” with respect to a net operating loss in a taxable year,
16 the taxpayer shall designate which section is to apply to the
17 taxpayer.

18 (d) Notwithstanding Section 24416, the amount of the loss
19 determined under this section, or Section 24416.4, 24416.5, or
20 24416.6 shall be the only net operating loss allowed to be carried
21 over from that taxable year and the designation under subdivision
22 (b) shall be included in the election under Section 24416.1.

23 (e) This section shall remain in effect only until December 1,
24 2014, and as of that date is repealed.

25 SEC. 15. This act provides for a tax levy within the meaning
26 of Article IV of the Constitution and shall go into immediate effect.

27 ~~SECTION 1. The Legislature declares its intent to enact~~
28 ~~legislation that would provide tax credits, in a manner similar to~~
29 ~~those provided with respect to enterprise zones, to businesses newly~~
30 ~~located in the Coachella Valley that develop clean energy~~
31 ~~technology.~~